APPENDIX.

Section 284 of the Revenue Act of 1926, approved February 26, 1926, 44 Stat. at L. 9, 66, 67, chap. 27, 26 USCA Int. Rev. Acts, 1940 ed. pp. 220, 222.

CREDITS AND REFUNDS.

Sec. 284(a) Where there has been an overpayment of any income, war-profits, or excess-profits tax imposed by this Act, the Act entitled "An Act to provide revenue, equalize duties, and encourage the industries of the United States, and for other purposes," approved August 5, 1909, the Act entitled "An Act to reduce tariff duties and to provide revenue for the Government, and for other purposes," approved October 3, 1913, the Revenue Act of 1916, the Revenue Act of 1917, the Revenue Act 1918, the Revenue Act of 1921, or the Revenue Act of 1924, or any such Act as amended, the amount of such overpayment shall, except as provided in subdivision (d), be credited against any income, war-profits, or excess-profits tax or installment thereof then due from the taxpayer, and any balance of such excess shall be refunded immediately to the taxpayer.

(b) Except as provided in subdivisions (c), (d), (e) and (g) of this section—

(1) No such credit or refund shall be allowed or made after three years from the time the tax was paid in the case of a tax imposed by this Act, nor after four years from the time the tax was paid in the case of a tax imposed by any prior Act, unless before the expiration of such period a claim therefor is filed by the taxpayer; and

(2) The amount of the credit or refund shall not exceed the portion of the tax paid during the three or four years, respectively, immediately preceding the filing of the claim, or if no claim was filed, then during the three or four years, respectively, immediately preceding the allowance of the credit or refund.

(c) * * * * *
(d) * * * * *
(e) * * * * *
(f) * * * * *
(g) * * * * *

(h) Except as provided in subdivision (d) this section shall not (1) bar from allowance a claim for credit or refund filed prior to the enactment of this Act which but for such

enactment would have been allowable, or (2) bar from allowance a claim in respect of a tax for the taxable year 1919 or 1920 if such claim is filed before the expiration of five years after the date the return was due.

Section 1113 (a) of the Revenue Act of 1926, approved February 26, 1926, 44 Stat. at L. 9, 116, chap. 27, 26 USCA Int. Rev. Acts, 1940 ed. p. 324.

LIMITATIONS UPON SUITS AND PROCEEDINGS BY THE TAXPAYER.

Sec. 1113(a) Section 3226 of the Revised Statutes, as amended, is reenacted without change, as follows:

"Sec. 3226. No suit or proceeding shall be maintained in any court for the recovery of any internal-revenue tax alleged to have been erroneously or illegally assessed or collected, or of any penalty claimed to have been collected without authority, or of any sum alleged to have been excessive or in any manner wrongfully collected until a claim for refund or credit has been duly filed with the Commissioner of Internal Revenue, according to the provisions of law in that regard, and the regulations of the Secretary of the Treasury established in pursuance thereof; but such suit or proceeding may be maintained, whether or not such tax, penalty, or sum has been paid under protest or duress. No such suit or proceeding shall be begun before the expiration of six months from the date of filing such claim unless the Commissioner renders a decision thereon within that time, nor after the expiration of five years from the date of the payment of such tax, penalty, or sum, unless such suit or proceeding is begun within two years after the disallowance of the part of such claim to which such suit or proceeding relates. The Commissioner shall within 90 days after any such disallowance notify the taxpayer thereof by mail."

REGULATIONS 69, INCOME TAX, REVENUE ACT OF 1926.

Art. 1304. *Claims for refund by taxpayers.*—Claims by the taxpayer for the refunding of taxes, interest, penalties, and additions to tax erroneously or illegally collected shall be made on Form 843. All facts relied upon in support of the claim should be clearly set forth in detail under oath.

* * *

Art. 1305. *Limitations upon the crediting and refunding of taxes paid.*—(A) Except as provided in subdivisions (B), (C), (D), and (E) of this article, the Commissioner is prohibited from making credits or refunds of income and profits taxes after three years from the time the tax was paid in the case of a tax imposed by the Revenue Act of 1926, or after four years from the time the tax was paid in the case of a tax imposed by any prior Act, unless before the expiration of such three or four year periods a claim therefor is filed. The amount of such credit or refund shall not exceed the portion of the tax paid during the three or four year period, as the case may be, immediately preceding the date of the allowance of the credit or refund, or if the credit or refund is based upon a claim, the amount of the credit or refund shall not exceed the portion of the tax paid during the three or four year period immediately preceding the date of filing such claim.

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Art. 1306. *Credits or refunds under prior Acts.*—Section 284, except as provided in subdivision (d) thereof (see article 1305), does not (1) bar from allowance any claim for credit or refund filed prior to the enactment of the Revenue Act of 1926 which but for such enactment would have been allowable, or (2) bar from allowance a claim in respect of a tax for the taxable year 1919 or 1920 if such claim is filed before the expiration of five years after the date the return was due.

Art. 1351. *Suits for recovery of taxes erroneously collected.*—Under the provisions of section 3226 of the Revised Statutes, as amended by the Revenue Act of 1924 and reenacted without change by section 1113 of the Revenue Act of 1926, no suit or proceeding by any person for the recovery of any internal revenue tax alleged to have been erroneously or illegally assessed or collected, or of any penalty claimed to have been collected without authority, or of any sum alleged to have been excessive or in any manner wrongfully collected, can be maintained in any court until a claim for refund or credit has been duly filed with the Commissioner (see section 284 and articles 1301-1306) and six months have elapsed from the date of filing such claim, unless the Commissioner renders a decision within six months, in which case suit may be brought upon the rendition of the decision. No suit or proceeding in court can be brought

after the expiration of five years from the date of the payment of such tax, penalty, or sum, unless such suit or proceeding is begun within two years after the disallowance of the part of such claim to which such suit or proceeding relates. The statute requires that the Commissioner shall notify the claimant by mail of the disallowance of the claim for refund or credit within 90 days after such disallowance. Payment of the tax, penalty, or other sum under protest or duress is not a prerequisite to the bringing of such suit or proceeding.

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Sec. 1318 of the Revenue Act of 1921, approved November 23, 1921, 42 Stat. at L. 227.

LIMITATIONS UPON SUITS AND PROSECUTIONS

Sec. 1318. That section 3226 of the Revised Statutes is amended to read as follows:

"Sec. 3226. No suit or proceeding shall be maintained in any court for the recovery of any internal-revenue tax alleged to have been erroneously or illegally assessed or collected, or of any penalty claimed to have been collected without authority, or of any sum alleged to have been excessive or in any manner wrongfully collected, until a claim for refund or credit has been duly filed with the Commissioner of Internal Revenue, according to the provisions of law in that regard, and the regulations of the Secretary of the Treasury established in pursuance thereof. No such suit or proceeding shall be begun before the expiration of six months from the date of filing such claim unless the Commissioner renders a decision thereon within that time, nor after the expiration of five years from the date of the payment of such tax, penalty, or sum."

* * * * * * * * * *

1921 ACT

Committee Reports

Report—Senate Finance Committee (67th Cong., 1st Sess., S. Rept. 275.)—Section 3226 of the Revised Statutes has been amended by section 1318 of this bill to provide that the taxpayer may bring suit to recover taxes at any time within five years after he has paid his tax, provided that he has filed a claim for the refund thereof and has waited six

months after the filing of such claim, in case the commissioner has not rejected the claim prior to such time. This provision removes the ambiguity and doubts surrounding section 3227 of the Revised Statutes. (p. 21)

Section 1318 amends section 3226 of the Revised Statutes in order to provide, as set forth under section 250, Title II, that no suit for the recovery of any internal-revenue tax may be begun after the expiration of five years from the date of the payment of such tax. At present the provisions of section 3227, which state that suit must be brought within two years after the cause of action accrued, do not provide a definite time and make the limitations depend upon the filing of a claim for refund rather than on the payment of the tax.

Section 1319 repeals section 3227 of the Revised Statutes because of the reasoning above. (p. 32)

Report—Conference Committee (67th Cong., 1st Sess., H. Rept. 486).—Amendment No. 801: This amendment inserts a section amending existing law so as to give taxpayers five years in all cases for instituting suits for the recovery of internal revenue taxes alleged to have been erroneously or illegally assessed or collected, with a provision that it shall not affect any suit or proceeding instituted prior to the passage of this act; and the House recedes. (p. 58)

Amendment No. 802: This amendment, in order to carry out the purposes of amendment No. 801, repeals the provision of existing law limiting the time for bringing suits by a taxpayer for the recovery of taxes to two years; and the House recedes. (p. 58)